

## EXTRADITION

*Convention signed at Madrid January 5, 1877*

*Ratified by Spain January 12, 1877*

*Senate advice and consent to ratification February 9, 1877*

*Ratified by the President of the United States February 14, 1877*

*Ratifications exchanged at Washington February 21, 1877*

*Entered into force February 21, 1877*

*Proclaimed by the President of the United States February 21, 1877*

*Amended and supplemented by convention of August 7, 1882<sup>1</sup>*

*Terminated April 14, 1903, by treaty of July 3, 1902<sup>2</sup>*

19 Stat. 650; Treaty Series 330

The United States of America and His Majesty the King of Spain: having judged it expedient, with a view to the better administration of justice, and the prevention of crime within their respective territories and jurisdictions, that persons charged with, or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a Convention for that purpose, and have appointed as their Plenipotentiaries, the President of the United States, Caleb Cushing, the Envoy Extraordinary and Minister Plenipotentiary of the United States near the Government of Spain, and His Majesty the King of Spain, His Excellency Don Fernando Calderon y Collantes, His Minister of State, Knight Grand Cross of the Royal and distinguished Order of Carlos Tercero, of those of Leopold of Austria and of Belgium, of that of Our Lord Jesus Christ of Portugal, of the Savior of Greece, of the Holy Sepulchre and of the Nishan Iftijar of Tunis, who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following Articles:

### ARTICLE I

It is agreed that the Government of the United States and the Government of Spain shall, upon mutual requisition duly made as herein provided, deliver up to justice all persons, who may be charged with, or who have been convicted of, any of the crimes specified in Article II of this Convention, committed within the jurisdiction of one of the contracting parties,

<sup>1</sup> TS 334, *post*, p. 565.

<sup>2</sup> TS 422, *post*, p. 628.

while said persons were actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other, provided that such surrender shall take place only upon such evidence of criminality, as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed.

#### ARTICLE II <sup>3</sup>

Persons shall be delivered up according to the provisions of this Convention, who shall have been charged with, or convicted of, any of the following crimes:

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, poisoning or infanticide.
2. The attempt to commit murder.
3. Rape.
4. Arson.
5. Piracy or mutiny on board ship when the crew or other persons on board, or part thereof, have, by fraud or violence against the commander, taken possession of the vessel.
6. Burglary, defined to be the act of breaking and entering into the house of another in the night time with intent to commit a felony therein.
7. The act of breaking and entering the offices of the government and public authorities, or the offices of banks, banking houses, saving banks, trust companies, insurance companies, with intent to commit a felony therein.
8. Robbery, defined to be the felonious and forcible taking, from the person of another, goods or money by violence or by putting him in fear.
9. Forgery, or the utterance of forged papers.
10. The forgery or falsification of official acts of the government or public authority, including courts of justice, or the uttering or fraudulent use of any of the same.
11. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, banknotes or other instruments of public credit; of counterfeit seals, stamps, dies and marks of State or public administrations; and the utterance, circulation or fraudulent use of any of the above-mentioned objects.
12. The embezzlement of public funds, committed within the jurisdiction of one or the other party, by public officers or depositaries.
13. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

<sup>3</sup> For amended texts of art. II, paras. 5, 12, 13, and 14, and addition of paras. 15, 16, 17, and 18, see supplementary convention of Aug. 7, 1882 (TS 334), *post*, p. 565.

14. Kidnapping, defined to be the detention of a person or persons, in order to exact money from them, or for any other unlawful end.

### ARTICLE III

The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with such crimes or offences; and no person surrendered by or to either of the contracting parties in virtue of this Convention shall be tried or punished for any political crime or offence, nor for any act connected therewith, committed previously to the extradition.

### ARTICLE IV

No person shall be subject to extradition in virtue of this Convention for any crime or offence committed previous to the exchange of the ratifications hereof—and no person shall be tried for any crime or offence other than that for which he was surrendered, unless such crime be one of those enumerated in Article II, and shall have been committed subsequent to the exchange of the ratifications hereof.

### ARTICLE V

A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offence for which the surrender is asked.

### ARTICLE VI

If a fugitive criminal, whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offence committed in the country where he has sought asylum,—or shall have been convicted thereof,—his extradition may be deferred until such proceedings be determined and until such criminal shall have been set at liberty in due course of law.

### ARTICLE VII

If a fugitive criminal, claimed by one of the parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered, in preference, in accordance with that demand which is the earliest in date.

### ARTICLE VIII

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Convention.

## ARTICLE IX

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

## ARTICLE X

Everything found in the possession of the fugitive criminal at the time of his arrest, which may be material as evidence in making proof of the crime, shall, so far as practicable, be delivered up with his person at the time of the surrender. Nevertheless, the rights of a third party, with regard to the articles aforesaid, shall be duly respected.

## ARTICLE XI

The stipulations of this Convention shall be applicable to all foreign or colonial possessions of either of the two contracting parties.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country or its seat of government, or where extradition is sought from a colonial possession of one of the contracting parties, requisition may be made by superior Consular officers.

It shall be competent for such representatives or such superior Consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two governments shall respectively have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered; and if on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.<sup>4</sup>

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<sup>4</sup> For additional articles inserted by supplementary convention of Aug. 7, 1882, see TS 334, *post*, p. 566.

## ARTICLE XII

This Convention shall continue in force from the day of the exchange of the ratifications thereof; but either party may at any time terminate the same on giving to the other six months' notice of its intention to do so.

In testimony whereof, the respective Plenipotentiaries have signed the present Convention in triplicate, and have hereunto affixed their seals.

Done at the city of Madrid, in triplicate, English and Spanish, this fifth day of January in the year of our Lord one thousand eight hundred and seventy seven.

CALEB CUSHING

[SEAL]

FERNANDO CALDERON Y COLLANTES

[SEAL]